

Exhibit C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

v.

S-3 19 CR. 497 (NSR)

MATITYAU MOSHE MALKA,

Defendant.

-----X

U.S. Courthouse
White Plains, N.Y.
October 12, 2021
11:30 a.m.

Before: HON. NELSON S. ROMÁN,
United States District Judge

APPEARANCES

UNITED STATES ATTORNEY'S OFFICE
SOUTHERN DISTRICT OF NEW YORK
300 Quarropas Street
White Plains, N.Y. 10601
BY: JAMIE BAGLIEBTER
Assistant United States Attorney

JOSEPH A. VITA, Esq.
HOWARD E. TANNER, Esq.
Standby Attorneys for
Defendant Matityau Malka

Also Present: Ruth Kohn
Yiddish Interpreter

Sue Ghorayeb, R.P.R., C.S.R.
Official Court Reporter

1 THE CLERK: Docket Number S -- as in superseding --
2 -3 19-CR-497 Defendant 5, United States of America v. Matityau
3 Moshe Malka. Will the parties please state their appearance
4 for the record beginning with the Government.

5 MS. BAGLIEBTER: Good morning, Your Honor. Jamie
6 Bagliebter for the Government.

7 THE DEFENDANT: Good morning, Your Honor. Matityau
8 Moshe Malka.

9 MR. VITA: Your Honor, good morning. Joseph Vita as
10 standby counsel for Mr. Malka and Howard Tanner is also
11 present as second standby counsel.

12 YIDDISH INTERPRETER: Ruth Kohn, standby Yiddish
13 interpreter.

14 THE COURT: All right. Good morning everyone.

15 This is a conference in the matter of the United
16 States v. Matityau Moshe Malka, 19-CR-497, Defendant No. 5.

17 My understanding is that we are here to hold an
18 arraignment on Superseding Indictment S3, which was filed
19 some time after our last conference, and also to conduct a
20 de novo bail review.

21 Are there any other items that the parties wish to
22 add to the agenda for today's conference?

23 MS. BAGLIEBTER: Not from the Government.

24 THE COURT: Mr. Malka, any other issues that you
25 want to bring to the Court's attention at today's conference?

1 THE DEFENDANT: Your Honor, just in reviewing the
2 new Superseding Indictment, I saw that the Government took out
3 the language about, about the pills. I also saw they took out
4 the penal codes from the -- from the Guatemalan reference on
5 Page --

6 THE COURT: Okay. So, what we're -- Mr. Malka, I
7 don't mean to interrupt you, but I'm going to -- we're going
8 to -- we are conducting two proceedings today, all right. One
9 is that you're going to be arraigned on a Superseding
10 Indictment, and then, thereafter, we're going to have what's
11 called a bail hearing. All right.

12 THE DEFENDANT: Yes.

13 THE COURT: You are discussing differences between
14 the Superseding Indictment and the prior document that you
15 were indicted on. All right. Is there anything else that you
16 want to discuss, that you want to -- you want to discuss
17 before the Court before we conduct the Superseding
18 Indictment -- I will arraign you rather on it and before we
19 move on to the bail hearing?

20 THE DEFENDANT: Not at this moment.

21 THE COURT: Okay. So, let's move forward. All
22 right. I'm going to begin with the arraignment.

23 Mr. Malka, I want to advise you that this is not a
24 trial. This proceeding is called an arraignment and it is
25 being held because the Government has just filed a

1 Superseding Indictment S3, which is docketed under ECF Number
2 358 in this matter.

3 Mr. Malka, during this proceeding, it is my job to
4 advise you of your rights. You have an absolute right to
5 remain silent at this and every other stage of the
6 proceedings. Any statement that you do make may be used
7 against you. You have the right to remain silent even if you
8 have already made statements to law enforcement officers, and
9 you are not required to answer any questions that law
10 enforcement officers ask you from this moment on.

11 You also have the right to consult with an
12 attorney. The Court has previously granted the application
13 to represent yourself in this matter. Do you wish to
14 represent yourself at this time at this arraignment?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Okay. All right. Do you understand
17 that if you continue to represent yourself, you will be
18 responsible for speaking for yourself in court and at all
19 proceedings? Do you understand this?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: All right. I want to remind you that I
22 have assigned Mr. Vita and Mr. Tanner to assist you as standby
23 counsel. They are available, for example, to answer any
24 questions, help you with logistics, and to help you conduct
25 research. All right. However, they cannot speak on your

1 behalf. Do you understand this?

2 THE DEFENDANT: Yes.

3 THE COURT: All right. Did you discuss the
4 Superseding Indictment — well, did you review the Superseding
5 Indictment and have you had an opportunity to discuss it with
6 standby counsel, either Mr. Vita and/or Mr. Tanner?

7 THE DEFENDANT: I was discuss it with them just very
8 little.

9 THE COURT: Okay. Do you need another moment to
10 discuss it with them?

11 THE DEFENDANT: We can try a minute.

12 THE COURT: I'm sorry?

13 THE DEFENDANT: I think it will be one, two minutes
14 we have for this.

15 THE COURT: You want some additional time to discuss
16 it with them?

17 THE DEFENDANT: I think if we have like one, two
18 minutes, it will be a little bit helpful.

19 THE COURT: Okay. I'll give you some time to have
20 some discussions with your standby counsel.

21 THE DEFENDANT: Thank you, Your Honor.

22 (Defendant conferring with counsel)

23 THE COURT: All right. Mr. Malka, are you ready to
24 proceed?

25 THE DEFENDANT: Yes, Your Honor.

Sue Ghorayeb, Official Court Reporter

1 THE COURT: Okay. You have consulted with standby
2 counsels, correct?

3 THE DEFENDANT: Yes.

4 THE COURT: All right. I'm going to ask at this
5 time that my Courtroom Deputy place Mr. Malka under oath or
6 affirmation.

7 THE CLERK: Mr. Malka, please raise your right hand.

8 Do you solemnly and sincerely affirm to tell the
9 truth, the whole truth, and nothing but the truth, this you
10 solemnly and sincerely affirm? Your answer?

11 THE DEFENDANT: Yes.

12 THE CLERK: Your Honor, he has been affirmed.

13 M A T I T Y A U M O S H E M A L K A, Defendant,
14 having first been duly sworn, was examined by the Court and
15 testified as follows:

16 THE COURT: All right. The record should reflect
17 that the Defendant has been sworn and\or placed under
18 affirmation.

19 Mr. Malka, it is important for you to understand
20 that if you knowingly make a false statement during these
21 proceedings, you could be subject to prosecution for perjury
22 or for making a false statement to the Court, and you could
23 face punishment up to five years' imprisonment and a \$250,000
24 fine for committing perjury. This punishment would be
25 separate and apart from any sentence you may be facing on the

1 crime charged in the Superseding Indictment. Do you
2 understand this?

3 THE DEFENDANT: Yes.

4 THE COURT: It is also important for you to
5 understand that any false statement that you make during this
6 proceeding, as well as any false statements you may have made
7 to Pretrial Services, may be used against you at a trial, if
8 you decide to testify. Do you understand this?

9 THE DEFENDANT: Yes.

10 THE COURT: Mr. Malka, can you please state your
11 full name?

12 THE DEFENDANT: Matityau Moshe Malka.

13 THE COURT: How old are you?

14 THE DEFENDANT: Twenty-nine years.

15 THE COURT: Do you have any difficulty reading,
16 writing, speaking or understanding the English language?

17 THE DEFENDANT: Some difficult, but I think for this
18 proceeding, especially with the Yiddish interpreter there, I'm
19 okay.

20 THE COURT: Okay. So, the record should reflect
21 that we do have the Yiddish interpreter available. If you
22 have — if at any time you need to use the Yiddish
23 interpreter, you should indicate as much, all right, and you
24 can use her services. All right. But you've indicated in the
25 past that you're comfortable with your ability to speak the

1 English language; is that correct?

2 THE DEFENDANT: If I will have some difficulties, I
3 will use the standby counsel, but —

4 THE COURT: Up to now, have you had any difficulty
5 with the English language?

6 THE DEFENDANT: I have some difficulties, yes.

7 THE COURT: At this time?

8 THE DEFENDANT: This time, no.

9 THE COURT: Anything about what we said so far that
10 you're having difficulties with?

11 (Interpreter translating)

12 THE DEFENDANT: No. Sorry.

13 THE COURT: Okay. How far did you go in school?

14 THE DEFENDANT: I go till the 18 years. I was in
15 all the steps in the yeshiva.

16 THE COURT: Okay. Is it fair to say that your
17 education is the equivalent of a high school education in the
18 United States?

19 THE DEFENDANT: I think so. Sure.

20 THE COURT: Have you ever been hospitalized or
21 treated for narcotic or alcohol addiction?

22 THE DEFENDANT: No.

23 THE COURT: In the last 24 hours, have you taken or
24 used any drugs, marijuana, alcohol or medication?

25 THE DEFENDANT: No.

1 THE COURT: Do you suffer from any physical or
2 mental problems which prevents you from fully understanding
3 today's proceedings?

4 THE DEFENDANT: No.

5 THE COURT: All right. Mr. Malka, you have an
6 absolute right to be represented by counsel at this and every
7 stage of the proceeding against you, including representation
8 during any questioning by authorities, during any lineup, and
9 at all court proceedings, including this one. That is, as we
10 have already discussed, you have intentionally, knowingly, and
11 voluntarily waived your right — that right and have chosen to
12 represent yourself, and you wish to continue representing
13 yourself in this matter; is that correct?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Mr. Malka, you have been charged with
16 violating federal law based on a Superseding Indictment. All
17 right. Have you seen a copy of the Superseding Indictment
18 that was provided to you?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Do you understand that the Indictment is
21 a document setting forth the Government's allegations against
22 you?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. Mr. Malka, did you read the
25 Superseding Indictment?

1 THE DEFENDANT: Yes.

2 THE COURT: And did you read the Superseding
3 Indictment with the assistance of standby counsel?

4 THE DEFENDANT: Yes.

5 THE COURT: At this time, Mr. Malka, do you waive
6 public reading of the Superseding Indictment?

7 THE DEFENDANT: Yes, but maybe one or two, three
8 paragraphs I will want to read it.

9 THE COURT: You want to read it or do you want — do
10 you want it read publicly?

11 THE DEFENDANT: If it's possible to be read
12 publicly.

13 THE COURT: I'm sorry?

14 THE DEFENDANT: If it's possible to read it in
15 public, the two or three paragraphs that —

16 THE COURT: Is there a portion of the Indictment
17 that you don't understand?

18 THE DEFENDANT: The same thing. First of all, it's
19 the same like I was trying to explain to the Court on the last
20 time, on the last arraignment, that there is many, many things
21 in the Indictment that's -- that is, first of all, not true,
22 and also it's, one example, they're charging me with
23 conspiracy since December 18 until March -- until March 21.

24 THE COURT: All right. So, this is not -- as I've
25 said to you, this is an accusatory instrument that lays out

1 the charges against you, all right. Whether or not you agree
2 with it is not really the issue before us. Whether or not you
3 believe it contains true and accurate statements is not really
4 relevant.

5 The purpose of this is to put you on notice of the
6 allegations which the Government believes you participated
7 in, all right, the crimes that you participated in, so that
8 you're fully informed and so that you can begin to defend
9 yourself against those allegations. All right. It's to put
10 you on notice, all right. So, the only question that I have
11 for you at this time is whether or not you've read the
12 Superseding Indictment.

13 THE DEFENDANT: Yes.

14 THE COURT: All right. And whether or not you wish
15 to have the charges contained in the Indictment publicly read
16 out loud, or whether or not you want those allegations -- or
17 you don't need to have them read out loud and therefore you're
18 waiving the public reading of the allegations.

19 Why don't you consult with standby counsel for a
20 moment or two and inquire whether or not you want to have it
21 read publicly or whether or not you're waiving the public
22 reading of the Indictment.

23 (Defendant conferring with standby counsel)

24 THE COURT: Also, Mr. Malka, before -- I see you
25 have been consulting with standby counsel. You do have the

1 Yiddish interpreter here. If there's any part of that
2 document or if you want the entire document read to you or
3 translated, you can have that done. We can have that done.
4 So, if you want the assistance of the Yiddish interpreter, you
5 can request it at this time.

6 THE DEFENDANT: Okay.

7 (Defendant consulting with counsel)

8 THE DEFENDANT: Your Honor, I'm waiving the right to
9 read it in publicly the whole Indictment, but just that -- but
10 just the three, three or four changes in the Indictment, this
11 paragraphs I want to read in public.

12 THE COURT: So, you want just portions of the
13 Indictment read publicly into the record?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Okay. What paragraphs are those?

16 THE DEFENDANT: First one is on Page 7, Paragraph
17 15.

18 THE COURT: That pertains to the charge which
19 relates to Defendants' kidnap the minors from New York,
20 correct?

21 THE DEFENDANT: Yes.

22 THE COURT: And you're saying you want Paragraph 15
23 read into the record publicly?

24 THE DEFENDANT: Yes.

25 THE COURT: And what else?

1 THE DEFENDANT: And Page 8, Paragraph 17, in the
2 bottom, the change -- there were change in this Indictment.

3 THE COURT: So, basically, it's the background
4 information and not necessarily all of the counts, is that
5 what you're asking?

6 THE DEFENDANT: Just the three changes that is -- it
7 didn't was by the -- by the last Indictment.

8 THE COURT: Okay. And what other paragraph?

9 THE DEFENDANT: The last one is on Page 14 and
10 Paragraph 25.

11 MR. VITA: 24-g.

12 THE COURT: I'm sorry. Which paragraph?

13 THE DEFENDANT: 20-G.

14 MS. BAGLIEBTER: Your Honor, if I may, my
15 understanding of what the Defendant is seeking is to -- it
16 appears that he is seeking to read the things that have been
17 taken out of the S2 Indictment and are not in the S3
18 Indictment. So, I think the paragraphs that he's asking you
19 to read aligning to the S3 may not accomplish what he's
20 seeking, because he's trying to identify the changes between
21 the S-2 and the S-3.

22 THE COURT: Just so that we have a complete record,
23 I'm going to ask the Government to read the Indictment into
24 the record.

25 MS. BAGLIEBTER: The entire Indictment?

1 THE COURT: Yes.

2 MS. BAGLIEBTER: Okay. Okay. This is Superseding
3 Indictment S-3 19-CR-497.

4 "Count One" is "Conspiracy to Transport A Minor
5 with Intent to Engage in Criminal Sexual Activity.

6 "The Grand Jury charges: OVERVIEW

7 "1. The charges set forth herein stem from the
8 role of NACHMAN HELBRANS, MAYER ROSNER, YAKOV WEINGARTEN
9 a/k/a "YAAKOV," a/k/a "YANKEV NACHUM," a/k/a "YAKOV NACHUM,"
10 SHMIEL WEINGARTEN, and YOIL WEINGARTEN, a/k/a "YOLE," a/k/a
11 "YOEL," the Defendants, in a conspiracy to sexually exploit a
12 minor girl ("Minor-1").

13 "2. NACHMAN HELBRANS, MAYER ROSNER, YAKOV
14 WEINGARTEN a/k/a "YAAKOV," a/k/a "YANKEV NACHUM," a/k/a
15 "YAKOV NACHUM," SHMIEL WEINGARTEN, and YOIL WEINGARTEN, a/k/a
16 "YOLE," a/k/a "YOEL," the Defendants, are all U.S. citizens
17 and senior leaders of Lev Tahor, an extremist Jewish sect
18 based in Guatemala.

19 "In or about December 2018, HELBRANS, ROSNER, and
20 the WEINGARTENS enlisted other members of Lev Tahor,
21 including MORDECHAY MALKA, ARON ROSNER, a/k/a "AARON," and
22 JACOB ROSNER, a/k/a "CHAIM ROSNER," the Defendants, to kidnap
23 Minor-1 and her younger brother ("Minor-2," and together with
24 Minor-1, the "Minors") in New York to reunite Minor-1 with
25 JACOB ROSNER, an adult, so that ROSNER and Minor-1 could

1 resume their sexual relationship in order to procreate.
2 Following an international manhunt, law enforcement recovered
3 the Minors in Mexico in or about late-December 2018. In or
4 about March 2019, approximately four months later, HELBRANS,
5 YAKOV WEINGARTEN, and MATITYAU MOSHE MALKA, the Defendants,
6 attempted to kidnap Minor-1 again. Approximately two years
7 later, in or about March 2021, a co-conspirator not named as
8 a defendant herein ("CC-1"), who is also a member of Lev
9 Tahor, attempted to kidnap the Minors for a third time.

10 "LEV TAHOR

11 "3. The Defendants are all members of Lev Tahor,
12 an extremist Jewish sect currently based in Guatemala and
13 comprised of approximately 250 members. The group was
14 founded in the 1980s by the father of NACHMAN HELBRANS, the
15 Defendant. HELBRANS' father remained the leader of Lev Tahor
16 until his death in or about 2017, when HELBRANS took over and
17 became the sect's new leader.

18 "4. In addition to NACHMAN HELBRANS, the
19 Defendant, Lev Tahor has a number of other senior leaders,
20 including MAYER ROSNER, YAKOV WEINGARTEN a/k/a "YAAKOV,"
21 a/k/a "YANKEV NACHUM," a/k/a "YAKOV NACHUM," SHMIEL
22 WEINGARTEN, and YOIL WEINGARTEN, a/k/a "YOLE," a/k/a "YOEL,"
23 the Defendants. These individuals, among others, are known
24 within the community as the "Hanhala" (translation:
25 management) of Lev Tahor. The Hanhala manages the

1 operational affairs of the community and controls every
2 aspect of the lives of Lev Tahor's adherents. In addition,
3 the Hanhala enlists members of the community for specific
4 tasks, including the kidnapping of the Minors in this case.

5 "5. After NACHMAN HELBRANS, the Defendant, and his
6 leadership team took over in or about 2017, they seized tight
7 control over the group and embraced several extreme
8 practices, including strict, invasive monitoring of members,
9 frequent beatings, and forced marriages of minors to adult
10 members. Children in Lev Tahor are often subject to
11 physical, sexual, and emotional abuse.

12 "MINOR-1's RELIGIOUS MARRIAGE TO DEFENDANT JACOB
13 ROSNER.

14 "6. In or about 2017, NACHMAN HELBRANS, the
15 Defendant, arranged to have Minor-1, his then-twelve-year-old
16 niece, engaged to be religiously "married" to JACOB ROSNER,
17 a/k/a "CHAIM ROSNER," the Defendant, who was eighteen years
18 old at the time. JACOB ROSNER is the son of MAYER ROSNER,
19 the Defendant, a Lev Tahor community leader and a member of
20 the Hanhala.

21 "Minor-1 and JACOB ROSNER were religiously
22 "married" the following year when she was thirteen and he was
23 nineteen, at which point, they immediately began a sexual
24 relationship with the goal of procreation. Minor-1 and JACOB
25 ROSNER were never legally married.

1 "7. All brides in the Lev Tahor community- no
2 matter their age- are required to have sex with their
3 husbands on predetermined intervals. New brides and grooms
4 are also provided a tutorial before marriage instructing them
5 on when and how to have sex with their spouse, and the Lev
6 Tahor leadership directed young girls to tell people outside
7 of Lev Tahor that they were not married, to pretend to be
8 older, and to deliver babies inside their homes instead of at
9 a hospital, partially to conceal their young ages from the
10 public.

11 "THE DEFENANTS KIDNAP THE MINORS FROM NEW YORK

12 "8. In or about October 2018, the mother of the
13 Minors (the "Mother"), who is also the sister of NACHMAN
14 HELBRANS, the Defendant, determined that it was no longer
15 safe for her children to remain in the Lev Tahor community in
16 Guatemala under the authority of her brother. The Mother
17 escaped from the group's compound and arrived in the United
18 States in early November 2018.

19 "On or about November 14th, 2018, a Temporary Order
20 of Custody and a Temporary Order of Protection were issued in
21 Kings County Family Court (in Brooklyn, New York) granting
22 the Mother temporary custody of her six children, including
23 the Minors. Those orders also prohibited the children's
24 father, a leader within Lev Tahor who is not named as a
25 Defendant herein, from having any communication with the

1 children.

2 "9. After the Mother fled Guatemala and settled in
3 New York with her children, NACHMAN HELBRANS, MAYER ROSNER,
4 YAKOV WEINGARTEN a/k/a "YAAKOV," a/k/a "YANKEV NACHUM," a/k/a
5 "YAKOV NACHUM," SHMIEL WEINGARTEN, YOIL WEINGARTEN, a/k/a
6 "YOLE," a/k/a "YOEL," MORDECHAY MALKA, ARON ROSNER, a/k/a
7 "AARON," and JACOB ROSNER, a/k/a "CHAIM," the Defendants, and
8 others known and unknown, devised a plan to return the
9 Minors, then fourteen and twelve years old, to Lev Tahor.

10 "10. At approximately 3:00 a.m., on or about
11 December 8th, 2018, NACHMAN HELBRANS, SHMIEL WEINGARTEN,
12 MORDECHAY MALKA, and JACOB ROSNER, a/k/a "CHAIM," the
13 Defendants, and others known and unknown, executed that plan
14 and kidnapped the Minors from a home in Woodridge, New York.

15 "11. NACHMAN HELBRANS, SHMIEL WEINGARTEN,
16 MORDECHAY MALKA, and JACOB ROSNER, a/k/a "CHAIM," the
17 Defendants, and others known and unknown, took the Minors to
18 a hotel where the children were given new clothes to change
19 into before being driven to Scranton International Airport in
20 Pennsylvania. HELBRANS also gave the Minors airplane tickets
21 and showed them passports bearing the names of two children
22 of HELBRANS, since the Mother possessed the Minors' actual
23 passports.

24 "HELBRANS and the Minors, using disguises meant to
25 conceal their identities, proceeded through airport security

1 in Scranton. They then flew to Washington D.C., then to
2 Texas, and then took a bus across the border to Mexico.
3 Other Defendants, including SHMIEL WEINGARTEN, MORDECHAY
4 MALKA, and JACOB ROSNER, took separate routes out of the
5 country, all finding their way to Mexico.

6 "12. Once in Mexico, NACHMAN HELBRANS, the
7 Defendant, and others known and unknown, transported the
8 Minors to several hotels and residences. During this period,
9 the Defendants sought and received logistical help from
10 members of Lev Tahor in the United States, Mexico, and
11 Guatemala. At various times, the Minors and HELBRANS were
12 met by other co-conspirators, including MAYER ROSNER, JACOB
13 ROSNER, a/k/a "CHAIM ROSNER," YOIL WEINGARTEN, a/k/a "YOLE,"
14 a/k/a "YOEL, and MATITYAU MOSHE MALKA, the Defendants, and
15 others known and unknown.

16 "13. On or about December 27th, 2018, after a
17 three-week search involving scores of local, federal, and
18 international law enforcement entities, the Minors were
19 recovered in a hotel in Mexico. At the time, they were
20 accompanied by SHMIEL WEINGARTEN and YOIL WEINGARTEN, a/k/a
21 "YOLE," a/k/a "YOEL, the Defendants.

22 "14. At the time of the December 2018 kidnapping,
23 Lev Tahor leadership was seeking asylum for the entire Lev
24 Tahor community in the Islamic Republic of Iran.

25 "FURTHER ATTEMPTS TO KIDNAP THE MINORS BY LEV TABOR

1 MEMBERS

2 "15. In or about March 2019, approximately three
3 months after the Minors were recovered in Mexico, NACHMAN
4 HELBRANS, YAKOV WEINGARTEN, a/k/a "YAAKOV," a/k/a "YANKEV
5 NACHUM," a/k/a "YAKOV NACHUM," and MATITYAU MOSHE MALKA, the
6 Defendants, and others known and unknown, attempted to kidnap
7 Minor-1 a second time.

8 "16. In or about March 2021, CC-1, a member of Lev
9 Tahor, approached the Minors in New York and attempted to
10 kidnap them once again. At the time of this attempted
11 kidnapping, CC-1 possessed three bus tickets from New York to
12 Georgia, drop phones, children's clothing, and birth
13 certificates for two children of ages similar to the Minors.
14 By late March 2021, CC-1 had returned" -- to Lev Tahor -- "to
15 the Lev Tahor compound in Guatemala.

16 "STATUTORY ALLEGATIONS

17 "17. From at least on or about December 5th, 2018
18 up to and including at least on or about December 27th, 2018,
19 in the Southern District of New York and elsewhere, NACHMAN
20 HELBRANS, MAYER ROSNER, YAKOV WEINGARTEN a/k/a "YAAKOV,"
21 a/k/a "YANKEV NACHUM," a/k/a "YAKOV NACHUM," SHMIEL
22 WEINGARTEN, and YOIL WEINGARTEN, a/k/a "YOLE," a/k/a "YOEL,"
23 the Defendants, and others known and unknown, would and did
24 knowingly transport an individual who had not attained the
25 age of 18 years in interstate and foreign commerce with the

1 intent that the individual engage in" -- criminal -- "engage
2 in sexual activity for which any person can be charged with a
3 criminal offense, and conspired to do so, to wit, HELBRANS,
4 ROSNER, YAKOV WEINGARTEN, SHMIEL WEINGARTEN, and YOIL
5 WEINGARTEN devised and executed a plan to transport Minor-1
6 from New York to Pennsylvania and other states en route to
7 Mexico and Guatemala with a dominant motive of reuniting her
8 with JACOB ROSNER so that they would engage in criminal
9 sexual activity, namely, sexual activity for which a person
10 can be charged with a criminal offense under New York Penal
11 Law Section 130.30, the Penal Code of the State of Mexico,
12 Article 273, the Penal Code of Guatemala, and Title 18,
13 United States Code, Section 2423(c).

14 "COUNT TWO

15 "(Conspiracy to Travel with Intent to Engage in
16 Illicit Sexual Conduct)

17 "The Grand Jury further charges:

18 "18. The allegations contained in Paragraphs 1
19 through 16 of this Indictment are repeated and realleged as
20 if fully set forth within.

21 "19. From at least on or about December 5th, 2018
22 up to and including at least on or about December 27th, 2018,
23 in the Southern District of New York and elsewhere, NACHMAN
24 HELBRANS, MAYER ROSNER, YAKOV WEINGARTEN a/k/a "YAAKOV,"
25 a/k/a "YANKEV NACHUM," a/k/a "YAKOV NACHUM," SHMIEL

1 WEINGARTEN, and YOIL WEINGARTEN, a/k/a "YOLE," a/k/a "YOEL,"
2 the Defendants, and others known and unknown, would and did
3 knowingly travel in interstate commerce with a motivating
4 purpose of engaging in illicit sexual conduct, and conspired
5 to do so, to wit, HELBRANS, ROSNER, YAKOV WEINGARTEN, SHMIEL
6 WEINGARTEN, and YOIL WEINGARTEN devised and executed a plan
7 to travel and transport Minor-1, then fourteen years old,
8 from New York to Pennsylvania and other states en route to
9 Mexico and Guatemala with a motivating purpose of reuniting
10 her with JACOB ROSNER, then twenty years old, so that they
11 would engage in illicit sexual conduct, namely, a sexual act
12 with a person under eighteen years of age that would be in
13 violation of Title 18, United States Code, Section 2243(a)
14 (which prohibits knowingly engaging in a sexual act with a
15 person under sixteen who is at least four years younger than
16 the person so engaging) if the sexual act occurred in the
17 special maritime and territorial jurisdiction of the United
18 States." And that's "Title 18, United States Code, Sections
19 2423(b) and (e) .

20 "COUNT THREE

21 "(Conspiracy to Kidnap, Unlawfully Use a Means of
22 Identification, and Enter by False Pretenses the Secure Area
23 of an Airport)

24 "The Grand Jury further charges:

25 "20. The allegations contained in Paragraphs 1

1 through 16 of this Indictment are repeated and realleged as
2 if fully set forth within.

3 "21. From at least on or about December 5th, 2018
4 up to and including at least on or about March 16th, 2021, in
5 the Southern District of New York and elsewhere, NACHMAN
6 HELBRANS, MAYER ROSNER, YAKOV WEINGARTEN a/k/a "YAAKOV,"
7 a/k/a "YANKEV NACHUM," a/k/a "YAKOV NACHUM," SHMIEL
8 WEINGARTEN, YOIL WEINGARTEN, a/k/a "YOLE," a/k/a "YOEL,"
9 MORDECHAY MALKA, ARON ROSNER, a/k/a "AARON," JACOB ROSNER,
10 a/k/a "CHAIM ROSNER," and MATITYAU MOSHE MALKA, the
11 Defendants, and others known and unknown, willfully and
12 knowingly did combine, conspire, confederate, and agree
13 together and with each other to commit offenses against the
14 United States, to wit, international parental kidnapping, in
15 violation of Title 18, United States Code, Section 1204,
16 unlawful transfer, possession, and use of a means of
17 identification, in violation of Title 18, United States Code,
18 Section 1028(a)(7), and entry by false pretenses to any
19 secure area of any airport, in violation of Title 18, United
20 States Code, Section 1036.

21 "22. It was a part and object of the conspiracy
22 that NACHMAN HELBRANS, MAYER ROSNER, YAKOV WEINGARTEN a/k/a
23 "YAAKOV," a/k/a "YANKEV NACHUM," a/k/a "YAKOV NACHUM," SHMIEL
24 WEINGARTEN, YOIL WEINGARTEN, a/k/a "YOLE," a/k/a "YOEL,"
25 MORDECHAY MALKA, ARON ROSNER, a/k/a "AARON," JACOB ROSNER,

1 a/k/a "CHAIM ROSNER," and MATITYAU MOSHE MALKA, the
2 Defendants, and others known and unknown, would and did
3 remove and retain two children, Minor-1 and Minor-2, who had
4 been in the United States, outside the United States, with
5 intent to obstruct the lawful exercise of parental rights, in
6 violation of Title 18, United States Code, Section 1204.

7 "23. It was a part and object of the conspiracy
8 that NACHMAN HELBRANS, the Defendant, and others known and
9 unknown, would and did knowingly transfer, possess, and use,
10 in and affecting interstate and foreign commerce, without
11 lawful authority, a means of identification of another
12 person, knowing that the means of identification belonged to
13 another actual person, with the intent to commit, and to aid
14 and abet, and in connection with any unlawful activity that
15 constitutes a violation of Federal law or that constitutes a
16 felony under any applicable State or local law, to wit, on or
17 about December 8, 2018, HELBRANS used his own children's
18 identities to unlawfully evade airport security by pretending
19 that Minor-1 and Minor-2 were his children, in order to
20 unlawfully remove Minor-1 and Minor-2 from the United States,
21 with intent to obstruct the lawful exercise of parental
22 rights, all in violation of Title 18, United States Code,
23 Section 1028(a) (7) .

24 "24. It was a part and object of the conspiracy
25 that NACHMAN HELBRANS, the Defendant, and others known and

1 unknown, would and did, by fraud and false pretense, enter
2 and attempt to enter any secure area of any airport, with
3 intent to commit a felony, to wit, on or about December 8th,
4 2018, HELBRANS fraudulently portrayed Minor-1 and Minor-2 as
5 his own children in order to enter the secure area of Wilkes
6 Barre Scranton International Airport, in order to unlawfully
7 remove Minor-1 and Minor-2 from the United States, with
8 intent to obstruct the lawful exercise of parental rights,
9 all in violation of Title 18, United States Code, Section
10 1036.

11 "Overt Acts

12 "25. In furtherance of the conspiracy and to
13 effect the illegal objects thereof, the following overt acts,
14 among others, were committed in the Southern District of New
15 York and elsewhere:

16 "a. On or about December 5th, 2018, MORDECHAY
17 MALKA, the Defendant, rented a car for the purpose of
18 transporting the Minors.

19 "b. On or about December 5th, 2018, JACOB ROSNER,
20 a/k/a "CHAIM ROSNER," SHMIEL WEINGARTEN, and MORDECHAY MALKA,
21 the Defendants, drove to a retail store to purchase clothing
22 that the Minors could wear during the kidnapping to hide that
23 they were ultra-Orthodox Jews.

24 "c. On or about December 8th, 2018, NACHMAN
25 HELBRANS, MAYER ROSNER, SHMIEL WEINGARTEN, MORDECHAY MALKA,

1 and JACOB ROSNER, the Defendants, kidnapped the Minors from a
2 residence in the Village of Woodridge, Sullivan County, New
3 York, where they were staying with the Mother.

4 "d. On or about December 8th, 2018, NACHMAN
5 HELBRANS, the Defendant, used his own children's identities
6 to allow the Minors to enter the secure area of an airport,
7 board an aircraft, and ultimately to leave the United States.

8 "e. On or about December 7th, 8th, 9th, and 19th,
9 2018, ARON ROSNER, a/k/a "AARON," the Defendant, sent money
10 to co-conspirators via Google Pay in order to facilitate the
11 removal and retention of the Minors.

12 "f. On or about December 16th, 2018, MAYER ROSNER,
13 the Defendant, called a co-conspirator not named as a
14 defendant herein ("CC-2") to convince him to come to Mexico
15 to evade law enforcement.

16 "g. In or about March 2019, MATITYAU MOSHE MALKA,
17 the Defendant, provided Minor-1 with a cellular telephone in
18 order to facilitate her removal and retention.

19 "h. In or about March 2021, CC-1 approached the
20 Minors and attempted to take them back to Guatemala.

21 "(Title 18, United States Code, Section 371.)

22 "COUNT FOUR

23 "(International Parental Kidnapping)

24 "The Grand Jury further charges:

25 "26. The allegations contained in Paragraphs 1

1 through 16 and Paragraph 27 of this Indictment are repeated
 2 and realleged as if fully set forth within.

3 "27. From at least on or about December 8th, 2018
 4 up to and including at least on or about December 27th, 2018,
 5 in the Southern District of New York and elsewhere, NACHMAN
 6 HELBRANS, MAYER ROSNER, YAKOV WEINGARTEN a/k/a "YAAKOV,"
 7 a/k/a "YANKEV NACHUM," a/k/a "YAKOV NACHUM," SHMIEL
 8 WEINGARTEN, YOIL WEINGARTEN, a/k/a "YOLE," a/k/a "YOEL,"
 9 MORDECHAY MALKA, ARON ROSNER, a/k/a "AARON," and JACOB
 10 ROSNER, a/k/a "CHAIM," the Defendants, did remove and retain
 11 a child, who had been in the United States, outside the
 12 United States, with intent to obstruct the lawful exercise of
 13 parental rights, to wit, HELBRANS, MAYER ROSNER, YAKOV
 14 WEINGARTEN, SHMIEL WEINGARTEN, YOIL WEINGARTEN, MORDECHAY
 15 MALKA, ARON ROSNER, and JACOB ROSNER, removed and retained
 16 Minor-1 outside the United States and away from her mother,
 17 who was lawfully in custody of Minor-1, and aided and abetted
 18 the same.

19 "(Title 18, United States Code, Sections 1204(a)
 20 and 2.)

21 "COUNT FIVE

22 "(International Parental Kidnapping)

23 "The Grand Jury further charges:

24 "28. The allegations contained in Paragraphs 1
 25 through 16 and Paragraph 27 of this Indictment are repeated

1 and realleged as if fully set forth within.

2 "29. From at least on or about December 8th, 2018
 3 up to and including at least on or about December 27th, 2018,
 4 in the Southern District of New York and elsewhere, NACHMAN
 5 HELBRANS, MAYER ROSNER, YAKOV WEINGARTEN a/k/a "YAAKOV,"
 6 a/k/a "YANKEV NACHUM," a/k/a "YAKOV NACHUM," SHMIEL
 7 WEINGARTEN, YOIL WEINGARTEN, a/k/a "YOLE," a/k/a "YOEL,"
 8 MORDECHAY MALKA, ARON ROSNER, a/k/a "AARON," and JACOB
 9 ROSNER, a/k/a "CHAIM," the Defendants, did remove and retain
 10 a child, who had been in the United States, outside the
 11 United States, with intent to obstruct the lawful exercise of
 12 parental rights, to wit, HELBRANS, MAYER ROSNER, YAKOV
 13 WEINGARTEN, SHMIEL WEINGARTEN, YOIL WEINGARTEN, MORDECHAY
 14 MALKA, ARON ROSNER, and JACOB ROSNER, removed and retained
 15 Minor-2 outside the United States and away from his mother,
 16 who was lawfully in custody of Minor-2, and aided and abetted
 17 the same.

18 "(Title 18, United States Code, Sections 1204(a)
 19 and 2.)

20 "COUNT SIX

21 "(International Parental Kidnapping)

22 "The Grand Jury further charges:

23 "30. The allegations contained in Paragraphs 1
 24 through 16 and Paragraph 27 of this Indictment are repeated
 25 and realleged as if fully set forth within.

1 "31. From at least on or about March 15th, 2019 up
2 to and including at least on or about March 25th, 2019, in
3 the Southern District of New York and elsewhere, NACHMAN
4 HELBRANS, YAKOV WEINGARTEN a/k/a "YAAKOV," a/k/a "YANKEV
5 NACHUM," a/k/a "YAKOV NACHUM," and MATITYAU MOSHE MALKA, the
6 Defendants, did attempt to remove and retain a child, who had
7 been in the United States, outside of the United States, with
8 intent to obstruct the lawful exercise of parental rights, to
9 wit, NACHMAN HELBRANS, YAKOV WEINGARTEN, and MATITYAU MOSHE
10 MALKA attempted to remove and retain Minor-1 outside the
11 United States and away from her mother, who was lawfully in
12 custody of Minor-1, and aided and abetted the same.

13 "(Title 18, United States Code, Sections 1204(a)
14 and 2.)"

15 THE COURT: Before the Assistant U.S. Attorney
16 continues, sir, do you want her to read the forfeiture
17 allegations and the substitute asset provisions?

18 THE DEFENDANT: I think it's not necessary.

19 THE COURT: Okay. So, so that the record is clear,
20 the substantive counts of the Indictment, Pages 1 through 16
21 have been read into the record, and the Defendant is not
22 requesting that the forfeiture allegation nor the substitute
23 asset provisions of the Indictment be read into the record.

24 All right. Let's proceed then. The charges as
25 they are set forth in the Superseding Indictment, how do you

1 wish to plead at this time, guilty or not guilty?

2 And you should consult with standby counsel before
3 you say anything further.

4 (Defendant conferring with counsel)

5 THE DEFENDANT: I'm ready to put in a plea, but, but
6 because this is not a piece of paper, it's a Superseding
7 Indictment, and this is charges that the Government would put
8 on my shoulders, so I'm responsible to understand the charges
9 why the Government has put on my shoulders, but especially
10 that for, for each count, it's repeating that everything —
11 even the count that I am not charged with, everything gets
12 repeated and realleged as it put, exactly like, like it's —
13 even, even if — even if I didn't charge with it, but the
14 allegations it's still, it's still on me. So, I want to
15 understand, especially when they're saying that I was, I
16 was — conspired together with co-defendant Nachman Helbrans
17 and, and Yakov Weingarten. I know as a fact that nobody
18 was — did any conspiracy with me about that, and it's not
19 just about the conspiracy, they're charging me with from, from
20 December until March 2020 — 21.

21 THE COURT: So, in essence, Mr. Malka, are you
22 denying the allegations?

23 You're saying that they never took place, correct?

24 THE DEFENDANT: The allegations that the Government
25 put on me that it's a conspiracy from, from December of '18

1 until March '21, I'm not understand.

2 THE COURT: You're saying that that's a false
3 allegation?

4 THE DEFENDANT: It's a false allegation because I
5 could not understand what I was have to do with the
6 December --

7 THE COURT: Okay.

8 THE DEFENDANT: -- 2018.

9 THE COURT: So, for purposes of a plea, you're
10 entering a not guilty plea on the Superseding Indictment.

11 All right. So, now that the plea -- a plea of not
12 guilty is entered on behalf of the Defendant on each and
13 every charge. All right. Let's move on, because Mr. Malka
14 indicated that he wants to make -- he wants to have a de novo
15 bail application.

16 I'm going to address the Government and ask the
17 Government to address the Court with respect to the bail in
18 this matter. And, Mr. Malka, I want you to pay attention
19 because you're going to be asked to address the Court as
20 well.

21 MS. BAGLIEBTER: Thank you, Your Honor. Your Honor,
22 the Government put in a letter on October 11th, yesterday,
23 setting forth the status of discussions between the Government
24 and Mr. Malka through his standby counsel. So, the Court
25 is -- that's the Government's general position, which is that

1 the parties have discussed to try and reach a proposed agreed
2 upon bail package, but we've reached an impasse on two
3 specific conditions, and that impasse has left us in a
4 position where, without those conditions, the Government does
5 not believe that there — without those conditions, the
6 Government believes that the Defendant would be a risk of
7 flight and a danger to the community, and couldn't consent to
8 a bail package.

9 So, we would ask the Court to consider the proposed
10 bail package that the parties had discussed in advance of
11 today and to consider the two conditions that we have reached
12 an impasse on and make a ruling accordingly.

13 THE COURT: Okay. Can you address what those
14 conditions are?

15 MS. BAGLIEBTER: Yes, Your Honor. So, the two
16 conditions where we've resulted in an impasse are: One, the
17 Government's position that the Defendant should not be able to
18 directly or indirectly associate or have contact outside the
19 presence of standby counsel with his co-defendants, and any
20 contact in the presence of standby counsel must be in a
21 language that standby counsel can understand. This is a very
22 standard provision for a defendant in a multi-defendant case
23 who is out on bail.

24 I understand that while he is incarcerated, he does
25 have the ability to communicate with his co-defendants, but

1 when he's out on bail, more restrictive conditions in some
2 areas are needed in order to assure the safety of the
3 community and avoid a risk of flight, and, so, for that
4 reason, we think that that condition is necessary here.

5 We have been open to a compromise position where
6 the Defendant -- because the Defendant is proceeding pro se,
7 where the Defendant would be able to have contact with his
8 co-defendants, in the presence of standby counsel, when
9 discussing joint defense matters, but -- and that is our
10 attempt to, to reach a compromise position here.

11 The second condition is that the Defendant cannot
12 directly or indirectly associate or have contact with any
13 individual currently or formerly associated with Lev Tahor.
14 However, the Defendant can submit a list of names of people
15 associated with Lev Tahor to the Government and to Pretrial
16 Services for pre-approval for communications with those
17 people. The Government in this case has previously required
18 that same condition for the other Defendant who is out on
19 bail without any limitations to it or without any carve-outs
20 to it.

21 Understanding that so much of the Defendant's
22 community and network and family is within Lev Tahor, we are
23 open to a carve-out here that would allow the Defendant to
24 have some interaction with the people in his life while he's
25 out on bail, and that all that we ask is a list of

1 preapproved names that would go to the Government and to
2 Pretrial Services.

3 My understanding from the Defendant's letter
4 submitted to the Court this morning is that he is unwilling
5 to agree to these conditions, and even if the Court were to
6 impose them, that he would be unwilling to abide by them. If
7 that is the Defendant's position, then the Government does
8 not believe that there's any set of conditions that would
9 assure risk — that would assure his appearance in court and
10 the safety of the community.

11 THE COURT: All right. So, just to be clear, that
12 without those conditions, it's the Government's position that
13 Mr. Malka poses a risk of flight and a danger to the
14 community. With respect to the risk of flight, why is it that
15 he poses such a risk?

16 MS. BAGLIEBTER: Your Honor, the Defendant has very
17 minimal ties in the United States. He spent the large
18 majority of his life in Guatemala. He has mentioned some
19 family relations that are in the tristate area, but there is
20 no sense or no detail has been provided giving the Government
21 comfort that he would have a place to live here, that that
22 place would have people in his life that could provide for
23 moral suasion or serve the function that typically ties in
24 their jurisdiction or in the United States serve of
25 incentivizing the Defendant to stay here. And, so, he

1 presents a very large risk of flight because of his minimal
2 ties to the United States, not to mention that the crime at
3 issue here involves crossing a border that we don't know how
4 it was crossed, it involves multiple — it involves efforts to
5 remove individuals out of the United States, which in and of
6 itself shows an unwillingness — the very crime itself shows
7 an unwillingness to follow court orders or a willingness to
8 act in contravention with court orders, and that, of course,
9 adds to the risk of flight concern.

10 On the dangerousness prong, the Defendant here was
11 in Mexico in December 2018 with the minor children and his
12 co-defendants after they had taken them from New York to
13 Mexico. He was there when the house that they were in was
14 raided by Mexican law enforcement. He was there when they
15 came back to the United States, and the other individuals
16 that he were with — he was with were arrested on charges in
17 this case. The Defendant was not arrested at that time, but
18 he was certainly aware that individuals had been — his
19 co-conspirators had been engaging in conduct that was
20 illegal.

21 After that, several months after that, after the
22 children had been found and had been returned to New York,
23 the Defendant, along with two of his co-defendants, worked
24 together to attempt to kidnap the children again, and as
25 we've stated to Your Honor before and as Your Honor is aware

1 and is also in the Indictment, efforts to obstruct this
2 mother's parental rights have continued through this year.
3 And, so, there is real concern about danger to the community
4 if the Defendant is released and doesn't have strong enough
5 conditions on him that he is willing to abide by, that would
6 truly protect the safety of these victims.

7 THE COURT: All right. Thank you, Counselor.

8 Mr. Malka, there appears to be a showing that's
9 been made that, A, you constitute a risk of flight because
10 you have minimal to no contacts in the United States, that's
11 number 1, and, number 2, that you pose a danger to the
12 community by virtue of some of the — some of the conduct
13 that you've engaged in in this matter. So, the Court would
14 like for you to address both issues.

15 THE DEFENDANT: Yes, Your Honor. I was working very
16 hard yesterday to prepare a statement to notify the Court
17 exactly about these two things and, and I was going to have
18 few people from — people from, from my community to help me
19 out to translate it from Yiddish to English. It was very,
20 very hard, especially with this conditions in the jail, that
21 we don't have the minimum tools to prepare any document, and
22 even that the Court seen that there is three pages filed
23 today. So, I want to put it clear in the record how it's
24 been, how it's been — how the work was done on this.

25 I was, I was on the phone together with — I

1 was -- I was writing it in Yiddish, then it was gone over
2 with some of my co-defendants to help me out, and then I
3 was -- then I was trying to get in touch with few people in
4 my community to translate it from Yiddish to English and then
5 to type it and to send it to my lawyer. It took me at least
6 the whole day, since the morning until almost 9:30 in the
7 night yesterday to prepare it, and even after I have it ready
8 in my hand, it's not a 100 percent exactly. If I will
9 have -- if I was have the tools in my hands so I was able to
10 try to announce it to the Court much more clearly, but -- and
11 I was trying to -- I was trying my best to, to answer the
12 Court exactly about these two things that Your Honor was just
13 asking.

14 So, I want to ask Your Honor please to allow me to
15 ask the interpreter to read this three pages, and I have an
16 explanation of the two things that the Government just --
17 they just spoken now, but before that, I have to read you
18 this because this is my statement that --

19 THE COURT: Is that document different from that
20 which was filed with the Court?

21 THE DEFENDANT: The same document that was filed
22 today, in the morning.

23 THE COURT: Okay. So, it's written in what
24 language?

25 THE DEFENDANT: English.

1 THE COURT: So, you want it read into the record?

2 THE DEFENDANT: I want to ask the interpreter to
3 read it in the record.

4 THE COURT: You don't want to read it on the record?

5 THE DEFENDANT: It will be, it will be for me very
6 hard to --

7 THE COURT: You want the interpreter to read this on
8 your behalf into the record?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Okay. Why don't you hand it to her.
11 You can sit down and read it.

12 THE INTERPRETER: Let me turn this off because I
13 hear myself double here.

14 THE DEFENDANT: "At our status conference September
15 23rd, 2021, the Court directed to pro se defendants Jacob
16 Rosner and Matityahu Malka to discuss and deal with the
17 prosecutors team regarding to get an agreement for the bail
18 proposal and conditions. However, the defendants replied in
19 open court that some of the prosecution's top conditions would
20 be very unfair and even impossible for us or for any
21 reasonable person to accept those kind of conditions, because
22 it violates the defendants' most protected humanitarian and
23 constitutional rights and, therefore, it is not a starting
24 point. Despite this, the Court still continued to direct the
25 defendants to discuss a future debate with the prosecution's

1 team to get an agreement regarding the conditions, and on this
2 background the Court scheduled a bail hearing for October 12,
3 2021.

4 "Your Honor, since the last conference, I tried in
5 any possible way to follow the Court's directions and I had
6 my standby counsel to approach the prosecution team in
7 multiple times and we tried to get clarification with them
8 and to get a compromise regarding our bail proposal as well
9 (as the Court is aware, the defendants of this case tried
10 many times to beg the prosecution team and to explain to them
11 that it is simply unfair and against the interest of justice
12 from the prosecution team to oppose every bail request from
13 the defendants and particularly in this circumstances that
14 this defendants are, as incarcerated pro se defendants,
15 without any basic tools or means to compete with the
16 prosecution team and their bail oppositions, including not
17 even a possibility to respond effectively on the nine-page
18 bail opposition motion that the prosecution team filed
19 against of my previous bail hearing back in February, let
20 alone any other defense preparation).

21 "However, the initial respond" — response — "of
22 the government to my standby counsel when trying to deal
23 regarding the bail conditions was that they still strictly
24 want to focus particularly and only on those conditions that
25 the defendants clearly mentioned in the status conference

1 that" -- is -- "that it is violating their rights. Still, we
2 tried to clarify to the prosecution team that we will accept
3 all reasonable conditions that the government proposed
4 and" -- will oppose in the future -- "and will" -- excuse
5 me -- "proposed and will propose in the future, but we begged
6 and cried to the government not to impose on us these two
7 conditions that violates all my basic rights as the simple
8 First Amendment right of freedom of religion and assembly, as
9 well as the Fifth and Sixth Amendment rights of due process,
10 fair process and fair trial. The government responded that
11 they will discuss it and reconsider it and they will try to
12 get" -- an arrangement -- "an agreement of their office
13 regarding those conditions.

14 "In any way, we were convinced that after the
15 thirty months I am incarcerated already and after the new
16 discovery that I brought to the attention of the Court and
17 the government in the last status conference regarding my
18 minimal participation in the alleged acts in the Indictment
19 and, therefore, I raised my hope that the government was
20 going to stop their oppositions and the request of unfair
21 conditions.

22 "Today, October 11, 2021, just a few hours ago, I
23 heard by my standby counsel that the government had filed a
24 matter to the Court that though they will not oppose on bail
25 and they are not seeking detention, they are still continuing

1 to request those conditions mentioned above and they are
2 asking the Court should impose on me those two conditions
3 that we fought so much against it. Namely, the condition
4 that I should not be allowed to talk or communicate with any
5 member of my community and even any person associated with my
6 community, and condition number two is that I am not going to
7 be allowed to talk to any of my pro se co-defendants in my
8 case. Your Honor, there is no circumstances that I can agree
9 to those unfair conditions. It violates all my rights and
10 the rights of my community.

11 "Regarding the government's first condition, Lev
12 Tahor is a religious community that I grew up in my entire
13 life. It's a peaceful, lovely, Jewish community of kindly
14 men, women, and children who chose to practice the original
15 Jewish religion of their parents and grandparents, and the
16 only thing that my community, Lev Tahor, is engaging in is to
17 simply study and practice our Jewish religion and making a
18 living in their happy community in Guatemala. In fact, this
19 is my only religious community and friends and relatives that
20 I am a part of since my childhood. So, because the
21 prosecution team is engaging in a religious persecution
22 campaign against this pious Jewish community, it maliciously
23 decided to select and bring charges against eight (innocent)
24 individuals who are living in my community and, therefore,
25 automatically, all 300 men, women, and children of the

1 community became criminals. And, therefore, to mark and
2 label a Jewish peaceful community as a gang/mafia/criminal
3 group so far that it is causing me to be a flight risk and
4 dangerous to the public only if I will even try to
5 communicate with anyone of my community is outrageous, evil,
6 and malicious motivated, and the only intention of the
7 prosecution team in enforcing on me those conditions is
8 to" — oblige — "obligate me to leave my holy original
9 Jewish (extreme/isolate), who my parents and grandparents
10 (extremists) followed and practiced for generations after
11 generations for over 2,000 years and were therefore
12 persecuted for thousands of years, and here the prosecution
13 team is seeking to assimilate me and my children and to force
14 us to accept the prosecution's (mainstream modern/reform/-
15 normal) Jewish religion.

16 "This is clearly a hate crime and crime against
17 humanity and motivated by personal bias and hate from the
18 reform Jewish prosecutors against my original Jewish
19 community and, therefore, I will never let this to happen
20 and, of course, I will never agree on my own" — to violate—
21 "on my own will to violate all of our rights, my own rights,
22 my families' rights, and all rights from the 300 innocent
23 human beings of my community. And even if the prosecution
24 team will seek detention and I would therefore have to stay
25 in jail another thirty months on top of the thirty months

1 that the government had already unjustifiably detained me and
2 my co-defendants I would be proud of it, the same as my
3 co-defendant Jacob Rosner was proud of refusing to agree to
4 those violations when the government was trying to force him
5 so — to force him so in his bail hearing in March 2020.

6 "Regarding the government's second condition, no
7 communication with my other co-defendants, my answer to this
8 is as I have said to the first one, because all of my
9 co-defendants are my religious community members and close
10 family. In addition, as Rabbi Helbrans is my personal only
11 religious Rabbi that I have in this world for many years.
12 Moreover, this condition will extremely damage and eliminate
13 any ability to present my case and to have a fair trial and
14 due process. Because, as the Court is aware, I am the
15 attorney on record in this case and representing myself as
16 pro se, the same that all of my co-defendants are material
17 witnesses to my case, and the same I am a witness in their
18 case, and I extremely rely on them regarding preparation of
19 my defense and to obtain many evidence in defense that only
20 they can provide me, in addition to affidavits or facts that
21 only they can provide, and only with them I can draft those
22 affidavits regarding" — all the — "to the alleged
23 conspiracy that allegedly we all conspired one with each
24 other.

25 "Therefore, in addition, me and my co-defendants

1 are secondary in English, and new law students. For over
2 two-and-a-half years, we have spent most of the day together
3 and worked as a group in the jail to try to study and defend
4 our joint case, in the legal part to study the law in
5 general, and in particular the laws applicable to this case,
6 as well as to learn and research the factual part of the
7 case, including the review of the voluminous discovery
8 material. Therefore, since our English and legal skills --
9 because of our English and legal skills limitations, we
10 strongly depend on each other's help.

11 "Moreover, due to the many obstacles and
12 restrictions imposed on the defendants incarcerated regarding
13 the defense preparations (see docket #217-1 and #320-1, 2),
14 we often are forced, because of the conditions, to divide
15 among ourselves the substantial work from the legal and
16 factual research, and very often (for the last 3 years) we
17 divide among ourselves the excessive amount of work for our
18 defense for the upcoming day/week; then, in the end of the
19 day/week, we all share among us our findings, and we
20 learn/teach each other the results of the specific
21 legal/factual topics that we have learned and/or discovered
22 during those research periods. Therefore, our defenses are
23 extremely connected one" -- with the other -- "to each other
24 and we share the very same defense strategies and
25 legal/factual arguments.

1 "Therefore, for all those reasons, to force me to
2 accept those conditions is simply to guarantee to the
3 prosecution team a guilty plea or at least a conviction,
4 because I will simply be cut off of all my defense resources,
5 evidence, witnesses, or any defense preparation, and
6 therefore, this would directly violate my constitutional
7 rights guaranteed to me by the Fourth, Fifth and Sixth
8 Amendments, and therefore there is no starting point with
9 these conditions as well.

10 "Nevertheless, with this statement, I want to
11 clarify to the Court in advance of my bail hearing, that if
12 the Court intends to impose on me one of these conditions, I
13 would not be able to accept it and to agree with them in any
14 way. Moreover, in all other conditions that I did agree, it
15 is not because I believe it is even necessary, because I am
16 convinced that I can prove that not me and no — not any one
17 of my co-defendants are not flight risk or dangerous to any
18 person, let alone the minors of this case that we allegedly
19 helped them to escape from their captivity and their abuse.
20 And I would like to direct the Court's attention to exhibit
21 filed by Rabbi Helbrans in his motion filed on September 11,
22 2021, docket #339-8, and this is a letter that I worked very
23 hard for many months to draft back in February 2021 for my
24 previous bail hearing, and it has been done through video
25 screen-sharing (when we still had the possibility to do it

1 before the jail had restricted this tool and since then our
2 last opportunity to prepare something for the Court in
3 writing was totally eliminated), although this was originally
4 directed to Judge McCarthy and because all the restrictions
5 facing in jail, I was not able to finalize and submit timely
6 at this previous bail hearing in February.

7 THE COURT: All right. Thank you.

8 THE DEFENDANT: Your Honor --

9 THE COURT: Okay. So, I'm going to basically take a
10 moment to speak about another case that is scheduled to be
11 heard at 1:00 o'clock. I have a matter that's on at
12 1:00 p.m., United States v. Curtis Lee. It's a telephone
13 conference. It's an initial appearance. It's already just
14 past 1:00 o'clock. So, I'm going to continue with this
15 hearing. I'm going to ask those that have joined this matter
16 by telephone that they be patient with the Court, because we
17 still haven't completed the bail hearing on the matter that's
18 currently before the Court, that is in the matter of
19 19-CR-497. So, those of you that are on the telephone line
20 waiting on the matter of United States v. Curtis Lee, Index
21 Number 21-CR-520, I'm going to ask you to remain patient and
22 just give us a couple of more minutes so that I can complete
23 the bail hearing and then move on to that matter.

24 THE DEFENDANT: Yes. Your Honor, I just wanna --

25 THE COURT: Mr. Malka, in addition to the statement

1 that you had the interpreter read into the record, do you want
2 to make an additional comment?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Okay.

5 THE DEFENDANT: About the -- about this two
6 conditions that the Government just was requesting the Court
7 to, to put it on my behalf is, everything would -- that I was
8 saying here is true, because my only way how I will be able to
9 defend my -- to defend myself and to try to get a fair trial
10 is just if I will have an opportunity -- if I will have
11 opportunity to talk to the co-defendants themselves, because
12 each of us sharing the same --

13 THE COURT: I understand that, Mr. Malka. I don't
14 think the Government wished to totally cut you off. I don't
15 think that that's a condition that I would agree to. All
16 right.

17 So that the record is clear, the request is that
18 you have standby counsel present when you have those
19 conversations, and that those conversations take place in
20 English, so that the standby counsel can understand what's
21 taking place. So, they are not trying to cut you off
22 completely. The other thing is -- so, I want the record to
23 to be clear. You do have -- you are entitled to speak to
24 witnesses, potential witnesses. So, I understand that you
25 may want to speak to members of your community, that's not

1 something that I would restrict you from doing. However, to
2 the extent that you have those conversations, those
3 conversations should take place also with the presence of
4 standby counsel and it should be — you should not be
5 precluded from having those conversations with potential
6 witnesses. That's not something that I would agree to or
7 that I would impose upon you. But there are some
8 restrictions that I believe the Government has raised that I
9 think are valid, and, therefore, what you've indicated to the
10 Court is that you're not prepared to abide by any of the
11 conditions that may be imposed —

12 THE DEFENDANT: That's not correct.

13 THE COURT: — that limits your communications with
14 the Defendants, all right, and that limits your communications
15 with your community. So, that's what you've indicated by
16 virtue of your statement to the Court that was read into the
17 record, unless you're telling me something differently.

18 THE DEFENDANT: Something differently, because just
19 it was not so clear written, because I have a lot of pressure
20 yesterday to finish it, to have it ready for the morning. So,
21 because this, at the end of this letter, there's few things
22 that if I have more, more time, so I'll try to explain it more
23 clearly.

24 THE COURT: Mr. Malka, I'm going to interrupt you
25 one more time, because, with all due respect, at our

1 conference on September 23rd, I alerted you to the fact that
2 there was going to be a bail hearing today. So, when you said
3 you only had a day to put this together, I beg to differ. My
4 calculation is that you had approximately two weeks, in excess
5 of two weeks, closer to 18 or 19 days to put this together,
6 and I've informed you and advised you and your colleagues that
7 you should make every effort to communicate with standby
8 counsel, so that they can provide you some legal advice with
9 respect to the standards that need to be applied and that will
10 be applied by the Court at these proceedings. All right.

11 I'm not sure whether or not you availed yourself to
12 the services or resources of the standby counsel, I'm not
13 here to judge you on that. However, when you make the
14 representation that you only had a day or so to prepare,
15 that's not a fair assessment, because you were told back on
16 September 23rd that such a hearing was going to take place,
17 all right, and we've also had prior — if I'm not mistaken,
18 you have appeared before the Magistrate Judge on a prior bail
19 application. I believe it may have been Judge McCarthy, if
20 I'm not mistaken, and unless I'm mistaken, she applied the
21 same standard. All right.

22 So, you've indicated you're not prepared to abide
23 by any set of conditions that the Court may impose that you
24 beg to differ from or that you believe compromises your
25 ability to represent yourself and/or impedes your ability to

1 communicate with your community, even if those are somewhat
2 limiting restrictions. And I'm not saying that I would
3 impose total restrictions on you, because I do recognize that
4 you represent yourself. You are entitled to confer with your
5 co-defendants to the extent that you may have similar
6 defenses, all right, and that there is a potential for
7 calling witnesses from your community, all right, that you
8 may want to have testify at trial. So, I would not impose
9 severe restrictions, but there may be some restrictions on
10 your communications with your co-defendants and with your
11 community.

12 I will also say this though, that I do have
13 concerns, grave concerns about your ties to the United
14 States. They relate to the risk of flight. While you are an
15 American citizen from what I understand, you have very little
16 ties to the United States. You've spent most of your time
17 outside of the United States. So that raises grave concerns
18 to the Court with respect to your risk of flight.

19 Your community is not -- what you indicated that
20 you're very close to -- is not within the United States, it
21 is abroad, it is in Guatemala, all right. And, so, there is
22 concerns about your risk of flight and your ties to the
23 United States, and whether or not -- if I do release you,
24 whether or not you would return as required.

25 Also, with respect to danger to the community, as

1 the Government has indicated and after reading rather the
2 Indictment, you are charged or -- you are charged with being
3 a part of a conspiracy that not only removed the children on
4 one occasion, but that was involved in multiple attempts to
5 remove the children.

6 So, with that in mind, I find that given all the
7 factors that the Court must consider, one, you are a risk of
8 flight, you do pose a risk of flight, and, two, you do pose
9 danger to the community, all right, and you've indicated that
10 were the Court to set -- impose a set of conditions and
11 require you to post bail, that you're not inclined to follow
12 them.

13 THE DEFENDANT: I didn't --

14 THE COURT: Well, Mr. Malka, I gave you, I gave you
15 an opportunity to not only file the document which was read
16 into the record, but I also gave you an opportunity to read
17 the document into the record. You object to any conditions
18 that the Government may propose.

19 I asked you to -- with the use of standby counsel
20 to try to negotiate conditions that might be acceptable to
21 the Government. I've read your statement to, to believe that
22 if I were to set a -- impose a set of conditions, that you
23 would not follow them.

24 THE DEFENDANT: I think not --

25 THE COURT: If you have ideological -- you have

1 ideological reasons for not following them. And with that
2 said, all right, I'm convinced that you would not follow any,
3 any conditions that I may, I may set.

4 THE DEFENDANT: It was my mistake.

5 THE COURT: So, I'm going to deny your application
6 for bail. The Court finds that you impose -- rather, that you
7 pose a flight risk and a danger to the community. All right.

8 And, also, just for the record, what is his
9 exposure if the Defendant were to be convicted of both
10 counts, which is, he's mentioned in Count One and in Count
11 Four?

12 MS. BAGLIEBTER: Your Honor, it's Count Three and
13 Count Six for the Defendant. His maximum exposure is eight
14 years and the Guidelines range as the Government calculates it
15 is 46 to 57 months.

16 THE COURT: All right. So, I'm just going to alert
17 the Government that there comes a time where, if his
18 Guidelines sentence is 46 to 57 months -- he's been in for 36
19 months? For how many months? In excess of thirty months?

20 THE DEFENDANT: Thirty months.

21 THE COURT: That's correct?

22 THE DEFENDANT: Thirty months.

23 THE COURT: Thirty months. I understand that the
24 allegations are serious, but we are getting close to that time
25 period where, you know, he's serving a considerable amount of

1 time already or has served a considerable amount of time
2 already.

3 MS. BAGLIEBTER: Your Honor, if I may, I just want
4 to note the Government agrees with the Court's assessment on
5 that and that is the motivating factor here in trying to work
6 towards a resolution with the Defendant where he could be
7 released out on bail on conditions that would make the Court
8 and the Government comfortable. Unfortunately, we've been
9 unable to reach such a place.

10 THE COURT: Mr. Malka, your -- the reason I'm not
11 inclined to set bail is because you will not be able to follow
12 any set of conditions that I may set.

13 THE DEFENDANT: It's not what I said.

14 THE COURT: Well, with all due respect, that's --
15 your statement was pretty firm, all right, which is why I've
16 cautioned you, all right, I've cautioned you about what
17 statements you make to the Court. I've cautioned you about
18 your decision to represent yourself and not to heed the advice
19 of standby counsel or even utilize the services of standby
20 counsel. All right.

21 So, the statements that you make to the Court are
22 very important, very important. So, I'll advise you to
23 reconsider your position on, one, representing yourself; two,
24 using the services of standby counsel. All right. They're
25 not just there to file documents on your behalf. They should

1 be a source for legal advice. So, I'm stressing that you
2 need to utilize their services as much as possible. Take,
3 you know — you should, you know, use them as often as you
4 can. All right.

5 Is there anything further we need to do?

6 If you want your standby counsel to communicate
7 with the Government and reconsider your position with respect
8 to certain conditions that may — that the Court may impose
9 or that the Government may suggest, and you're inclined to
10 adhere to those conditions, all right, you're more than
11 welcome to ask standby counsel to communicate with the
12 Government with respect to that aspect, and possibly, you
13 know, you can come back to me, all right, or even the
14 Magistrate Judge and make, you know, another bail
15 application. But your statement seems pretty clear to me,
16 all right.

17 You have to be careful what you say to the Court.
18 You're not only a Defendant here, but you are serving as your
19 own attorney and your words, statements, and comments matter.
20 Do you understand me?

21 THE DEFENDANT: Yes, Your Honor. I want to make
22 sure to make it clear before I was beginning — I was asking
23 Your Honor to the permission to the interpreter to read it.
24 So, I was making clear that this document — this statement
25 that was filed, if I was have an opportunity to do it by my

1 own and not to -- to take time and not so much pressure that I
2 was unable to review it a 100 percent after it was already
3 typed, so it's not -- so, there's many things that I would be
4 able to explain it differently and especially about this point
5 that I'm -- I never even one --

6 THE COURT: Mr. Malka, you have every right to
7 represent yourself, but the law is a very complicated area,
8 especially the laws that you're charged with. You have made
9 an affirmative decision to represent yourself, and I told you
10 from the very beginning that as such I will treat you like any
11 other attorney that appears before me. You've made a decision
12 to represent yourself.

13 THE DEFENDANT: That's right, but, but --

14 THE COURT: All right. So, I have to take you at
15 your word and statements that you make matter.

16 THE DEFENDANT: I make it clear to the Court before.

17 THE COURT: Statements that you make matter.
18 Documents where you make -- where you make affirmative
19 statements and that you ask the Court to consider matter.

20 THE DEFENDANT: But I was never -- I was never
21 told -- even, even one second was -- if the Court was to put
22 me on conditions and I solve it, I would never in my life
23 violate any conditions from any Court.

24 THE COURT: Mr. Malka, that seems to be somewhat
25 different than the representation that you made previously on

1 the record, both orally and on your paper. Statements that
2 you make to the Court matter.

3 THE DEFENDANT: This is just because I didn't have
4 the minimum tools to do it by my own and I was supposed to —
5 I was supposed to have and take help, but I didn't.

6 THE COURT: Mr. Malka. Mr. Malka, you have standby
7 counsel available as a resource. Whether or not you're
8 utilizing them, I can't say, because any communications that
9 you make — that you may have between you is confidential, I'm
10 not privy to, and they don't — they're not in a position to
11 inform the Court of any communications that you may have with
12 them. They don't tell me what you say. They don't tell me
13 what issues are discussed. But they have been available to
14 you from the very first day when you represented to the Court
15 that you're making an affirmative decision to represent
16 yourself.

17 THE DEFENDANT: That's right, but yesterday —

18 THE COURT: They are there to provide you legal
19 advice. Whether or not you're asking them for legal advice, I
20 don't know, but they have been present from the very beginning
21 that you asked to represent yourself. As a matter of fact,
22 they've both appeared at each and every conference, and I know
23 that you communicate with them because they've filed documents
24 on your behalf.

25 THE DEFENDANT: To file documents it's one thing,

1 but to type —

2 THE COURT: Mr. Malka, you should be using them at
3 all times.

4 THE DEFENDANT: I'm trying the most that's possible,
5 but standby counsel is very, very limited, and yesterday, when
6 I was — when I was trying to do this statement through the
7 standby counsel, so it was — I was unable to do it through
8 standby counsel this —

9 THE COURT: Mr. Malka, you had more than a day. I
10 reminded you on September 23rd that this hearing was going to
11 take place. So, for you to tell me, "I didn't have enough
12 time to prepare," doesn't hold too much water with me.

13 THE DEFENDANT: I was received the letter from the
14 Government just yesterday afternoon. So, because of that, I
15 was going to reply on that.

16 THE COURT: As your own attorney, you're responsible
17 for knowing what the standard is, the standards that the
18 courts have to consider at bail, and I know that you have
19 treatises, I know that you have certain books that talk about
20 bail, so you are responsible for that legal research. You
21 also have resources by way of standby counsel. You did not —
22 I don't know if you're availing yourself of them, but I rely
23 on the statements that you make before me.

24 I'm not going to repeat myself, all right. I've
25 made a decision, all right. If you want — if you're

1 prepared to reconsider your position, all right, I'll
2 consider it, but not now.

3 THE DEFENDANT: I was, I was just making —

4 THE COURT: Okay?

5 THE DEFENDANT: Just to make clear with, with the
6 Court that after, after interpreter was finish it, I told for
7 the Court that this is not just only my statement. I have a
8 verbal that I was preparing it by handwriting and I didn't
9 even start one word. I have four pages of notes that I was —
10 I want to notify the Court about these two things and this was
11 just one part of it, and I was unable to do it.

12 THE COURT: Okay. So quickly tell me why you don't
13 pose a risk of flight.

14 THE DEFENDANT: Because two things: First of all,
15 even by the Guidelines of the Government, if I will escape —
16 if I will escape or, or run away from the country, definitely
17 for sure I will get more charges and more years, because I'm
18 violating the Court's order, so — and also because at the end
19 of my — of the trial — of the trial will be ready eleven
20 months from now, it will be way more than the Sentencing
21 Guidelines. And about the risk of flight, to, to — it's
22 going to make sense that somebody that have a trial in eleven
23 months and by the date of the trial, even if, even if he found
24 guilty, God forbid, so then it's time served because he
25 already received the maximum he could? So, for eleven months,

1 I should run away from the country?

2 I never said that I will not follow Your Honor's
3 order. I'll follow all the orders, but just I want to talk
4 about these two conditions and to explain to Your Honor a
5 little bit more about these two conditions, why.

6 THE COURT: Mr. Malka, whatever conditions I set --
7 I may set is not for discussion. If I set a condition, you
8 must follow it. It's not for you to negotiate with the Court.
9 I do not negotiate with defendants or detained individuals who
10 are seeking bail. I set the conditions and you either meet
11 them or you don't. It is not a negotiation.

12 The Government proposes conditions and I may or may
13 not accept those requests or those proposals, but I set the
14 conditions, and you must be able to demonstrate to me that if
15 I set a condition, you will follow it. You didn't
16 demonstrate that to me by virtue of your statement to the
17 Court, and this is why we're here.

18 I've made a decision. If you're going to take a
19 different position, I suggest you consult with standby
20 counsel, so they could be better addressed and you can make a
21 better presentation to the Court. Okay?

22 And if there's nothing further, we are in recess.

23 THE DEFENDANT: I want, I want to say to Your Honor
24 that I never told even one time that I will not follow an
25 order.

1 THE COURT: We have already addressed that. Your
2 statement was clear to me. I take you at your word and I am
3 not going to repeat myself.

4 You will have an opportunity now to go back and
5 speak with standby counsel, so that they can explain to you
6 what the standards are, and if you're going to take a
7 different position, you can come back and ask to see me
8 again, but I'm not going to go around in circles with you,
9 Mr. Malka. You are now acting as your own attorney, I take
10 you at your word. We are in recess.

11 (Case adjourned)

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